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1977

Reg. No. KL/TV/14

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXII] Trivandrum, Monday, 11th April 1977 / 21st Chaithra 1899 [No. 216

GOVERNMENT OF KERALA

General Administration (Political-A) Department

NOTIFICATION

No. 44104/Pol.A2/77/GAD. *Dated, Trivandrum, 11th April 1977.*

On the advice of Shri K. Karunakaran, Chief Minister, the Governor has been pleased to appoint

Shri K. Avukaderkutty Naha
„ Baby John
„ K. K. Balakrishnan
„ J. Chitharanjan
„ M. K. Hemachandran
„ E. John Jacob
„ Kanthalot Kunhambu
„ K. M. Mani
„ K. Narayana Kurup
„ Oommen Chandy
„ K. Pankajakshan
„ K. Sankaranarayanan, and
„ P. K. Vasudevan Nair

as members of the Council of Ministers and they assumed charge of Office on the Forenoon of Monday, the 11th April 1977.

G. BHASKARAN NAIR,
Chief Secretary.

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1977

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EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXII] Trivandrum, Monday, 11th April 1977 / 21st Chaithra 1899 [No. 215

GOVERNMENT OF KERALA

Local Administration and Social Welfare (C) Department

NOTIFICATION

G. O. (MS) 88/77/LA & SWD. *Dated, Trivandrum, 9th April 1977.*

S. R. O. No. 308/77.—Under sub-section (1) of Section 5 of the Trivandrum Municipal Corporation (Dissolution) Act, 1976 (8 of 1976) and in supersession of Notification No. G. O. (MS) 82/77/LA&SWD dated the 15th March, 1977 published as S. R. O. No. 234/77 in the Kerala Gazette Extraordinary No. 164 dated the 15th March, 1977, the Government hereby appoint Shri K. H. Namboodiripad, I. A. S. for the purpose of the said sub-section, and determine that all the functions of the Council and of the Mayor, the Deputy Mayor and of the Standing Committee and other Committees of the Corporation of the City of Trivandrum shall be exercised and performed by him.

By order of the Governor,

N. GOPALAKRISHNAN NAIR,
Special Secretary.

Explanatory Note

(This does not form part of Notification but is intended to indicate its general purport).

On the expiry of the leave granted as per G. O. (Rt) 1650/77/GAD dated 2-3-1977, Shri K. H. Namboodiripad has rejoined duty on the A. N. of 25th March 1977 as the Administrator of the Corporation of Trivandrum. The Notification is intended to allow him to perform the duties of the Administrator.

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33/1086/MC.

Government of Kerala
1977

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

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GOVERNMENT OF KERALA

Law (Legislation-C) Department

NOTIFICATION

No. 4087-Leg. C3/77/LAW. *Dated, Trivandrum, 11th April 1977/ 21st Chaithra 1899.*

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the Vice-President acting as President on the 25th day of March, 1977.

By order of the Governor,
K. VISWANATHAN NAIR,
Additional Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1977.

33/1091/MC.

ACT II OF 1977

THE KERALA LABOUR WELFARE FUND ACT, 1975

An Act to provide for the constitution of a fund for promoting the welfare of labour and for certain other matters connected therewith in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide for the constitution of a fund for promoting the welfare of labour and for certain other matters connected therewith in the State of Kerala;

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Labour Welfare Fund Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may by notification in the Gazette, appoint, and different dates may be appointed for different areas of the State.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Board" means the Kerala Labour Welfare Fund Board established under section 4;

(b) "Commissioner" means the Labour Welfare Fund Commissioner appointed under section 22;

(c) "contribution" means the sum of money payable to the Board in accordance with the provisions of section 15;

(d) "employee" means—

(i) any person who is employed for hire or reward to do any work, skilled or unskilled, manual, supervisory, clerical or technical, in an establishment for a period of one hundred and fifty days in an year, whether the terms of employment be express or implied, but does not include any person—

(A) who is employed mainly in a managerial capacity; or

(B) who draws wages exceeding seven hundred and fifty rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

(C) who is employed as an apprentice or on part-time basis.

Explanation.—An apprentice means a person who, according to the certified standing orders applicable to the establishment, is an apprentice or who is declared to be an apprentice by the authority specified in this behalf by the Government; and

(ii) any other person employed in any establishment, whom the Government may, by notification in the Gazette, declare to be an employee for the purposes of this Act.

Explanation.—If any question arises whether a person is an employee for the purposes of this Act or not, the question shall be referred to the Government or an officer authorised by the Government in this behalf, whose decision thereon shall be final;

(e) "employer" means a person who employs either directly or through another person, either on behalf of himself or any other person, one or more employee or employees in an establishment and includes—

(i) in a factory, any person named under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (Central Act 63 of 1948), as the manager;

(ii) in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

(f) "establishment" includes—

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act 63 of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act;

(ii) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961);

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act 64 of 1951);

(iv) any commercial establishment within the meaning of clause (4) of section 2 of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960), which employs, or on any working day during the preceding twelve months employed, five or more persons:

Provided that any such commercial establishment shall continue to be an establishment for the purposes of this Act notwithstanding that there was a reduction in the number of persons to less than five at any subsequent time:

Provided further that where for a continuous period of not less than six months the number of persons employed therein has been less than five, such commercial establishment shall cease to be an establishment for the purposes of this Act with effect from the beginning of the month following

the expiry of the said period of six months, but the employer shall, within one month from the date of such cessation, intimate by registered post the fact thereof to such authority as the Government may specify in this behalf;

(v) an establishment, including a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) or the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (XII of 1955), which carries on any business or trade or any work in connection therewith or ancillary thereto and which employs, or on any working day during the preceding twelve months employed, more than twenty persons; but does not include an establishment (not being a factory) of the Central or any State Government;

(vi) any other establishment which the Government may, by notification in the Gazette, declare to be an establishment for the purposes of this Act;

(g) "Fund" means the Labour Welfare Fund constituted under section 3;

(h) "Inspector" means an Inspector appointed under section 24;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "State" means the State of Kerala;

(k) "unpaid accumulation" means all payments other than gratuity due to an employee but not paid to him within a period of three years from the date on which the payments became due, whether before or after the commencement of this Act, and the gratuity accrued to an employee after the commencement of this Act but not paid within the period of three years from the date of such accrual, but does not include the amount of contribution, if any, paid by an employer to a provident fund established under the Employees' Provident Funds Act, 1952 (Central Act 19 of 1952) or any other provident fund established by the Government;

(l) "wages" means wages as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936 (Central Act 4 of 1936).

3. *Labour Welfare Fund.*—(1) The Government shall constitute a Fund called the Labour Welfare Fund, and, notwithstanding anything contained in any other law for the time being in force or in any contract or instrument, all unpaid accumulations shall be paid, at such intervals as may be prescribed, to the Board, and be credited to the Fund, and the Board shall keep a separate account therefor until claims thereto have been decided in the manner provided for in section 13.

(2) There shall also be credited to the Fund—

(a) unpaid accumulations paid to the Board under sub-section (2) of section 13;

(b) all fines including the amount realised under Standing Order 20 of the Model Standing Orders issued under the Kerala Industrial Employment (Standing Orders) Rules, 1947, from the employees by the employers, notwithstanding anything contained in any agreement between the employer and employee;

(c) deductions made under the proviso to sub-section (2) of section 9 of the Payment of Wages Act, 1936 (Central Act 4 of 1936);

(d) contributions by employers and employees;

(e) any interest by way of penalty paid under section 14;

(f) any voluntary donations;

(g) any amount raised by the Board from other sources to augment the resources of the Board;

(h) any fund transferred under sub-section (6) of section 17;

(i) any sum borrowed under section 18;

(j) any unclaimed amount credited to the Government in accordance with the rules made under the Payment of Wages Act, 1936 (Central Act 4 of 1936) and the Minimum Wages Act, 1948 (Central Act 11 of 1948);

(k) grants or advances made by the Central or State Government or any local authority;

(l) all fines imposed and realised from employers by courts for violation of labour laws less the deductions made by courts towards administrative expenses.

(3) The sums specified in sub-section (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner, and the accounts of the Fund shall be maintained and audited in such manner, as may be prescribed.

4. *Establishment of Board.*—(1) With effect from such date as the Government may, by notification in the Gazette, appoint in this behalf, there shall be established a Board by the name "Kerala Labour Welfare Fund Board".

(2) The Board shall be a body corporate having perpetual succession and a common seal, and shall, by the said name, sue and be sued.

5. *Constitution of Board.*—(1) The Board shall consist of the following members appointed by the Government, namely:—

(a) such number of representatives of employers and employees as may be prescribed:

Provided that both employers and employees shall have equal representation on the Board; and

(b) such number of officials and non-officials as may be prescribed.

(2) The Government shall appoint one of the members of the Board to be its Chairman.

(3) The number of members of the Board including the Chairman shall not exceed twenty-five.

6. *Appointment of Chairman, and other members to be notified.*—The appointment of the Chairman, and the other members of the Board shall be notified in the Gazette.

7. *Term of office of members.*—The term of office of the members of the Board other than the official members shall be three years from the date of their appointment and they shall be eligible for reappointment:

Provided that a member may continue as such member until the appointment of his successor.

8. *Disqualifications and removal.*—(1) No person shall be chosen as, or continue to be, a member of the Board if he—

(a) is an officer or servant under the Board; or

(b) is an undischarged insolvent; or

(c) is of unsound mind; or

(d) has been convicted by a criminal court for an offence involving moral turpitude, unless such conviction has been set aside; or

(e) is in arrears of any sum due to the Board.

(2) The Government may remove from office any member who—

(a) is or has become subject to any of the disqualifications mentioned in sub-section (1); or

(b) is absent without leave of the Board for more than three consecutive meetings of the Board.

9. *Resignation of office by member and filling up casual vacancies.*—(1) Any member other than an official member may resign his office by giving notice thereof in writing, to the Government, and on such resignation being accepted, shall be deemed to have vacated his office.

(2) A casual vacancy in the office of a member may be filled up, as soon as may be, by the Government and a member so appointed to fill such vacancy shall hold office for the unexpired portion of the term of office of the member whose place he fills.

10. *Power to appoint committees.*—(1) For the purpose of advising the Board in the discharge of its functions and in particular for carrying into effect any of the matters specified in sub-section (3) of section 17, the Board may constitute one or more committees.

(2) Each committee constituted under sub-section (1) shall consist of atleast one member of the Board.

11. *Acts of Board or committee not to be invalidated by informality, vacancy, etc.*—No act done or proceeding taken under this Act by the Board or any committee shall be invalidated merely on the ground—

(a) of any vacancy or defect in the constitution of the Board or the committee; or

(b) of any defect or irregularity in the appointment of a person acting as a member thereof; or

(c) of any defect or irregularity in such act or proceeding not affecting the merits of the case.

12. *Functions of the Board.*—The functions of the Board shall be the administration of the Fund and such other functions as may be assigned to it by or under this Act.

13. *Unpaid accumulations and claims thereto.*—(1) All unpaid accumulations shall be deemed to be abandoned property.

(2) Any unpaid accumulation paid to the Board in accordance with the provisions of section 3 shall, on such payment, discharge an employer of his liability to make payment to an employee in respect thereof, but to the extent only of the amount paid to the Board, and the liability to make payment to the employee to the extent aforesaid shall, subject to the succeeding provisions of this section, be deemed to be transferred to the Board.

(3) As soon as possible after the payment of any unpaid accumulation is made to the Board, the Board shall by notice—

(a) exhibited on the notice-board of the establishment in which the unpaid accumulation was earned; and

(b) published in the Gazette, and in such other manner as may be prescribed, regard being had to the amount of the unpaid accumulations; invite claims by employees, their heirs, legal representatives or assigns for any payment due to them.

(4) The notice referred to in sub-section (3) shall be given in the manner aforesaid in June and December of every year, for a period of three years from the date of the payment of the unpaid accumulation to the Board.

(5) If any question arises whether the notice referred to in sub-section (3) was given as required by that sub-section and sub-section (4), a certificate of the Board that it was so given shall be conclusive.

(6) If a claim is received, whether in response to the notices or otherwise, within a period of four years from the date of first publication of the notice in respect of such claim, the Board shall transfer such claim to the authority appointed under section 15 of the Payment of Wages Act, 1936 (Central

Act 4 of 1936), having jurisdiction over the area in which the establishment is situate, and that authority shall proceed to adjudicate upon and decide such claim.

(7) In hearing any claim referred to in sub-section (6), the authority referred to in that sub-section shall have the powers conferred by the Payment of Wages Act, 1936 (Central Act 4 of 1936) and follow the procedure (in so far as it is applicable), specified therein.

(8) If the authority aforesaid is satisfied that any such claim is valid so that the right to receive payment is established, it shall decide that the unpaid accumulation in relation to which the claim is made shall cease to be deemed to be abandoned property, and shall order the Board to pay the whole of the dues claimed, or such part thereof as the authority decides are properly due, to the employee; and the Board shall make payment accordingly:

Provided that the Board shall not be liable to pay any sum in excess of that paid under sub-section (1) of section 3 to the Board as unpaid accumulations, in respect of the claim.

(9) If a claim for payment is refused, the employee or his heirs, legal representatives or assigns, as the case may be, may, within sixty days from the date of receipt of the order of the authority, prefer an appeal to the District Court.

(10) The decision of the authority, subject to appeal to the District Court, and the decision in appeal of the District Court, shall be final and conclusive as to the right to receive payment, the liability of the Board to pay and also as to the amount, if any.

(11) If no claim is received within the period specified in sub-section (6), or a claim has been refused by the authority, or on appeal by the District Court, then, the unpaid accumulations in respect of such claim shall accrue to, and vest in, the State as *bona vacantia*, and shall thereafter be deemed to have been transferred to, and form part of, the Fund.

14. *Interest on unpaid accumulations or fines after notice of demand.*—(1) If an employer does not pay to the Board any amount of unpaid accumulations or fines realised from the employees, within the time specified by or under this Act, the Commissioner may serve or cause to be served a notice on such employer to pay the amount within the period specified therein, which shall not be less than thirty days from the date of service of such notice.

(2) If the employer fails, without sufficient cause, to pay any such amount within the period specified in the notice, he shall, in addition to that amount, pay, by way of penalty to the Board, simple interest—

(a) for the first three months at two per cent of the said amount for each complete month or part thereof after the last date by which he should have paid it according to the notice; and

(b) for each complete month or part thereof thereafter at five per cent of that amount during the time he continues to make default in the payment of that amount:

Provided that the Government may, subject to such conditions as may be prescribed, remit the whole or any part of the penalty in respect of any period.

15. *Contribution to the Fund by employees and employers.*—(1) Every employee shall contribute fifty paise per half year to the Fund and every employer shall in respect of each such employee contribute one rupee per half year to the Fund.

(2) Every employer shall pay to the Fund both the employer's contribution and the employee's contribution before the 15th day of July and 15th day of January of every year.

(3) Notwithstanding anything contained in any other law for the time being in force, the employer shall be entitled to recover from the employees the employee's contribution by deduction from his wages or in such other manner as may be prescribed, and such deduction shall be deemed to be a deduction authorised by or under the Payment of Wages Act, 1936 (Central Act 4 of 1936).

16. *Grants and advances by Government.*—The Government may, from time to time, make grants or advance loans to the Board for the purposes of this Act on such terms and conditions as the Government may, in each case, determine.

17. *Vesting and application of Fund.*—(1) The Fund shall vest in, and be held and applied by, the Board as trustees subject to the provisions, and for the purposes, of this Act.

(2) The moneys in the Fund shall be utilised by the Board to defray the cost of carrying out measures which may be specified by the Government from time to time to promote the welfare of employees and of their dependents.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), the moneys in the Fund may be utilised by the Board to defray expenditure on the following activities, namely:—

(a) community and social education centres including reading rooms and libraries;

(b) games and sports;

(c) vocational training;

(d) community necessities;

(e) entertainment and other forms of recreation;

(f) convalscent homes for tuberculosis patients;

(g) holiday homes in health resorts;

(h) part-time employment for housewives of employees;

(i) pre-schools;

(j) higher education;

(k) nutritious food to children of employees;

(l) employment opportunities to the disabled employees;

(m) cost of administering this Act including the salaries and allowances of the staff appointed for the purposes of this Act; and

(n) such other objects as would, in the opinion of the Government, improve the standard of living and ameliorate the social conditions of labour:

Provided that the Fund shall not be utilised in financing any measure which the employer is required under any law for the time being in force to carry out:

Provided further that unpaid accumulations and fines shall be expended by the Board under this Act notwithstanding anything contained in the Payment of Wages Act, 1936 (Central Act 4 of 1936) or any other law or agreement for the time being in force.

(4) The Board may, with the approval of the Government, make grants from the Fund to any local authority or any other body in aid of any activity for the welfare of employees.

(5) If any question arises whether any particular expenditure is or is not debitable to the Fund, the matter shall be referred to the Government whose decision thereon shall be final.

(6) The Board may accept the transfer of any Labour Welfare Fund of any establishment and may continue any activity financed from such Labour Welfare Fund if the said Fund is duly transferred to the Board.

18. *Power of Board to borrow.*—The Board may, from time to time, with the previous sanction of the Government and subject to the provisions of this Act and to such conditions as may be prescribed in this behalf, borrow any sum required for the purposes of this Act.

19. *Deposit of Fund and placing of accounts and audit report before State Legislature.*—(1) All moneys and receipts forming part of the Fund shall, with the previous sanction of the Government, be deposited in the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955) or in any subsidiary bank within the meaning of clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959) or in any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970), or in any District Co-operative Bank or in the Treasury Savings Bank, and such account shall be operated upon by such officers of the Board as may be authorised by the Board and in such manner as may be prescribed.

(2) The accounts of the Board, as certified by the auditor, together with the audit report thereon, shall be forwarded yearly to the Government and the Government may issue such instructions to the Board in respect thereof as they deem fit and the Board shall comply with such instructions.

(3) The Government shall cause the accounts of the Board together with the audit report thereon forwarded to them under sub-section (2) to be laid yearly before the Legislative Assembly of the State.

20. *Investment of Fund.*—If the Fund or any portion thereof cannot be applied at an early date for carrying out any of the activities referred to in this Act, the Board shall invest the same in any of the securities specified in clauses (a) to (d) and (f) of section 20 of the Indian Trusts Act, 1882 (Central Act 2 of 1882).

21. *Power of Government to give directions to Board.*—The Government may give the Board such directions as in their opinion are necessary or expedient in connection with the expenditure from the Fund or for carrying out the purposes of this Act, and it shall be the duty of the Board to comply with such directions.

22. *Appointment and powers of Commissioner.*—(1) The Government may, by notification in the Gazette, appoint a Labour Welfare Fund Commissioner who shall be the Chief Executive Officer of the Board.

(2) The conditions of appointment and service and the scale of pay of the Commissioner shall be such as may be prescribed.

(3) It shall be the duty of the Commissioner to ensure that the provisions of this Act and the rules made thereunder are duly carried out and for this purpose he shall have the power to issue such orders not inconsistent with the provisions of this Act and the rules made thereunder, as he deems fit, including any order implementing the decisions taken by the Board under this Act or the rules made thereunder.

23. *Finance Officer.*—(1) The Board shall have a Finance Officer appointed by the Government by notification in the Gazette.

(2) The Finance Officer shall exercise such powers and perform such duties as may be prescribed.

(3) The conditions of appointment and service and the scale of pay of the Finance Officer shall be such as may be prescribed.

24. *Inspectors.*—(1) The Government may, by notification in the Gazette, appoint such persons as they think fit and possessing such qualifications as may be prescribed to be Inspectors for the purposes of this Act, and may define the local limits within which, and the class of establishments in respect of which, they shall exercise their functions.

(2) Subject to any rules made in this behalf, an Inspector shall have power to do all or any of the following matters within the local limits for which he is appointed, namely:—

(a) to make such examination and hold such inquiry as may be necessary for ascertaining whether the provisions of this Act have been and are being complied with;

(b) require the production of any prescribed register and any other document in possession of the employer in connection with the sums payable to the Fund;

(c) to enter at all reasonable times any premises with such assistants as he may think fit;

(d) to exercise such other powers as may be prescribed.

25. *Appointment of staff of Board.*—(1) The Board shall appoint such number of officers and other employees as may be necessary for carrying out its functions under this Act.

(2) The conditions of appointment and service and the scales of pay of the officers and servants referred to in sub-section (1) shall be such as may be prescribed by regulations made by the Board.

26. *Power of Government and authorised officers to call for records, etc.*—The Government or any officer authorised by the Government in this behalf may call for the records of the Board, inspect the same and supervise the working of the Board.

27. *Mode of recovery of sums payable to Board.*—Any sum payable to the Board or into the Fund under this Act shall, without prejudice to any other mode of recovery, be recoverable on behalf of the Board as an arrear of public revenue due on land.

28. *Penalty for obstructing Inspector or for failure to produce documents, etc.*—Any person who wilfully obstructs an Inspector in the exercise of his powers or discharge of his duties under this Act or fails to produce for inspection on demand by an Inspector any register, record, or other documents maintained in pursuance of the provisions of this Act or the rules made thereunder or to supply to him on demand true copies of any such document shall, on conviction, be punished—

(a) for the first offence, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and

(b) for a second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, in any case where the offender is sentenced to fine only, the amount of fine shall not be less than fifty rupees.

29. *Cognizance of offences.*—(1) No court shall take cognizance of any offence punishable under this Act except on a complaint by, or with the previous sanction in writing, of, the Commissioner.

(2) No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

30. *Offences by companies.*—(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

31. *Limitation of prosecution.*—No court shall take cognizance of an offence punishable by or under this Act unless a complaint thereof is made within one year of the date on which the offence is alleged to have been committed.

32. *Power to supervise welfare activities of establishmennt.*—In regard to any money set apart in any establishment specifically

for the purpose of promoting the welfare of the employees in such establishment, the Board shall have power—

(i) to require the production of any document in possession of the employer of that establishment in connection with such money to satisfy itself as to whether such money is being applied for such purpose;

(ii) to call for any information from such employer as it may deem relevant; and

(iii) to issue such directions to such employer as it may deem fit for the purpose of utilising the fund for promoting the welfare of the employees.

33. *Penalty for non-compliance with the direction of the Board.*—Any person who wilfully fails to produce any document required by the Board or to furnish any information called for by the Board or wilfully fails to comply with any directions issued by the Board under section 32 shall, on conviction, be punished—

(a) for the first offence, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and

(b) for a second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, in any case where the offender is sentenced to fine only, the amount of fine shall not be less than fifty rupees.

34. *Annual report.*—The Board shall, as soon as may be after the end of each year, prepare and submit to the Government before such date and in such form as may be prescribed a report giving an account of its activities during the previous year and of the activities, if any, which are likely to be undertaken by the Board in the next year, and the Government shall cause every such report to be laid before the Legislative Assembly of the State as soon as may be after it is received by the Government.

35. *Supersession of Board.*—(1) If the Government are of opinion that the Board is unable to perform, or has persistently made default in the performance of, the duties imposed on it by or under this Act or has exceeded or abused its powers, they may by notification in the Gazette supersede the Board for such period not exceeding six months, as may be specified in the notification:

Provided that before issuing a notification under this sub-section, the Government shall, by notice, require the Board to show cause within such period as may be specified in the notice why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board and the Chairman shall, during the period of supersession, be exercised and performed by such authority or person as the Government may direct;

(c) all funds and other property vested in the Board shall, during the period of supersession, vest in the authority or person referred to in clause (b); and

(d) all liabilities legally subsisting and enforceable against the Board shall be enforceable against the authority or person referred to in clause (b) to the extent of the funds and properties vested in it or him.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government may—

(a) extend the period of supersession for such further period not exceeding six months as they may consider necessary; or

(b) reconstitute the Board in the manner provided in section 5.

36. *Delegation of powers.*—(1) The Government may, by notification in the Gazette, authorise any authority or officer to exercise any of the powers vested in them by or under this Act, except the power to make rules under section 40, and may in like manner withdraw such authority.

(2) The Board may, by general or special order in writing, delegate to the Commissioner or other officer of the Board such of its powers and functions under this Act, except the power to make regulations under section 42, as it may deem necessary, and may in like manner withdraw such authority.

(3) The exercise of any power delegated under sub-section (1) or sub-section (2) shall be subject to such restrictions and conditions as may be specified in the order and also to control and revision

by the Government or by such officer as may be empowered by the Government in this behalf or, as the case may be, by the Board or such officer as may be empowered by the Board in this behalf.

(4) The Government or the Board, as the case may be, shall also have the power to control and revise the acts and proceedings of any officer empowered under sub-section (3).

37. *Members of Board, Commissioner, Inspectors, etc., to be public servants.*—The members of the Board, the Commissioner, the Finance Officer, Inspectors and all officers and servants of the Board, and all persons entrusted with the execution of any function under this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

38. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or the Board for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

39. *Exemption.*—The Government may, by notification in the Gazette, exempt any establishment or class of establishments from all or any of the provisions of this Act subject to such conditions as may be specified in the notification.

40. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the intervals at which or the period within which any of the sums referred to in section 3 shall be paid to the Board or into the Fund, the manner of making such payment and the agency for, and manner of, collection of any such sum;

(b) the manner in which the accounts of the Fund shall be maintained and audited;

(c) the allowances, if any, payable to the members of the Board;

(d) the manner in which the employee's contribution may be deducted from his wages;

(e) the form of notice regarding unpaid accumulations;

(f) the procedure for making grants from the Fund;

(g) the procedure for defraying the expenditure incurred in administering the Fund;

(h) the manner in which the Board shall conduct its business;

(i) the delegation of the powers and functions of the Board to the Commissioner or other officer of the Board and the conditions and limitations subject to which such powers may be exercised or functions discharged;

(j) the percentage of the annual income of the Fund beyond which the Board may not spend on the staff and on other administrative expenses;

(k) the registers and records to be maintained under this Act;

(l) the publication of the report of the activities financed from the Fund together with a statement of receipts and expenditure of the Fund and statement of accounts;

(m) any other matter which has to be or may be prescribed.

41. *Rules and notifications to be laid before the Legislative Assembly.*—Every rule made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or notification or decides that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

42. *Power to make regulations.*—(1) The Board may, by notification in the Gazette, make regulations not inconsistent with this Act and the rules made thereunder for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the procedure in regard to the transaction of business at the meetings of the Board including the quorum;

(b) the purposes for which and the manner in which temporary association of persons may be made;

(c) the duties, functions and the terms and conditions of service of the members of the committees;

(d) the manner in which and the form in which the accounts of the Board shall be maintained;

(e) any other matter which has to be, or may be, prescribed by regulations.

(3) No regulation or its cancellation or modification shall have effect unless the same is approved by the Government.

(4) The Government may, by notification in the Gazette, rescind any regulation made under this section and, thereupon, the regulation shall cease to have effect.

43. *Amendment of section 8, Central Act 4 of 1936.*—In section 8 of the Payment of Wages Act, 1936 (Central Act 4 of 1936), in its application to the State of Kerala, in sub-section (8), before the *Explanation*, the following proviso shall be inserted, namely:—

"Provided that in the case of any establishment to which the Kerala Labour Welfare Fund Act, 1975, applies all such realisations shall be paid into the Fund constituted under that Act.".

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GOVERNMENT OF KERALA

Local Administration & Social Welfare (C) Department

NOTIFICATION

G. O. (MS) No. 89/77/LA&SWD. *Dated, Trivandrum, 11th April 1977.*

S. R. O. No. 310/77.—Under sub-section (1) of section 4 of the Calicut Municipal Corporation (Extension of Time for Re-constitution) Act, 1976 (3 of 1977) and in supersession of the Notification G. O. (MS) No. 267/76/LA & SWD dated the 6th November 1976 published as S. R. O. No. 1135/76 in Gazette Extraordinary No. 631 dated the 6th November 1976, the Government of Kerala hereby appoint Shri K. Sankaranarayanan to exercise and perform all the functions of the Council and of the Mayor, the Deputy Mayor, the Standing Committees and other Committees of the Corporation of the City of Calicut.

By order of the Governor,

N. GOPALAKRISHNAN NAIR,
Special Secretary.

33/1096/MC.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

Under sub-section (1) of section 4 of the Calicut Municipal Corporation (Extension of Time for Re-constitution) Act, 1976 (3 of 1977) Government have determined to appoint Shri K. Sankaranarayanan as the Administrator of the Corporation of City of Calicut to exercise and perform all the functions of the Council and of the Mayor, the Deputy Mayor and of the Standing Committees and other Committees of the said Corporation. The notification is intended for the above purpose.

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